

87-1687 ①

Supreme Court, U.S.

FILED

FEB 12 1988

JOSEPH F. SPANIO, JR.  
CLERK

No. 88- \_\_\_\_\_

IN THE SUPREME COURT OF THE UNITED STATES

\_\_\_\_\_ Term, 1988

In re Leonard J. Zepke

Petitioner in Prohibition or Mandamus

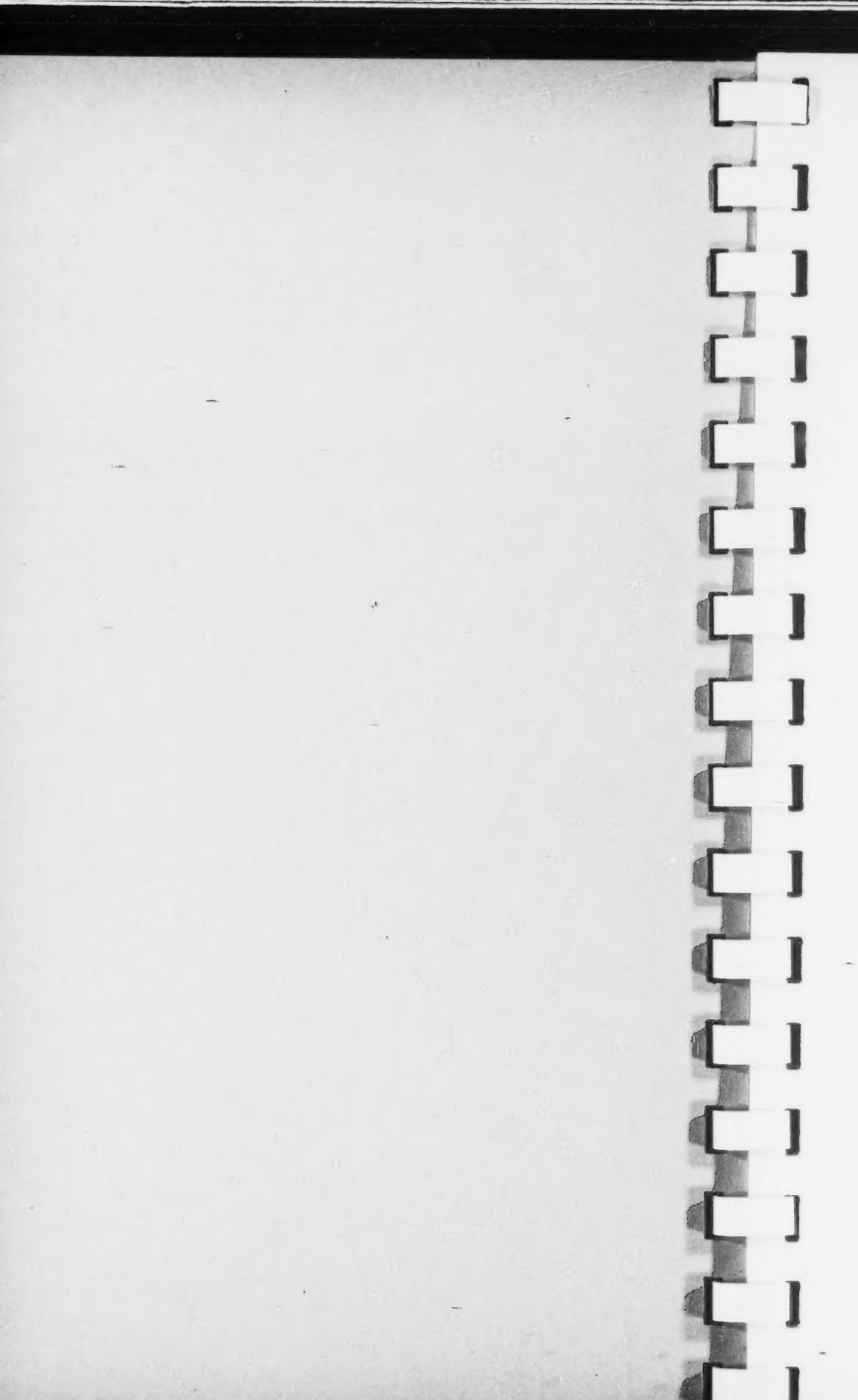
PETITION FOR PROIBITION OR MANDAMUS

To The United States Court of Appeals for the  
Sixth Circuit

In the matter of Leonard J. Zepke, plaintiff-  
appellant v Crawford & Company, defendant-  
appellee, Case Number 86-1745

LEONARD J. ZEPKE  
Petitioner in pro per  
21819 Woodbridge Street  
St. Clair Shores, Mich. 48080

4792



## I. Questions Presented for Review

Were the lower federal courts absent all subject matter jurisdiction in the instant case?

Petitioner says "Yes".

II. A list of parties to the proceedings in the court whose judgment is sought to be reviewed is as follows:

A. The United States Court of Appeals, Sixth Circuit

B. Crawford and Co., defendant-appellee in the matter of the case identified on the cover page.

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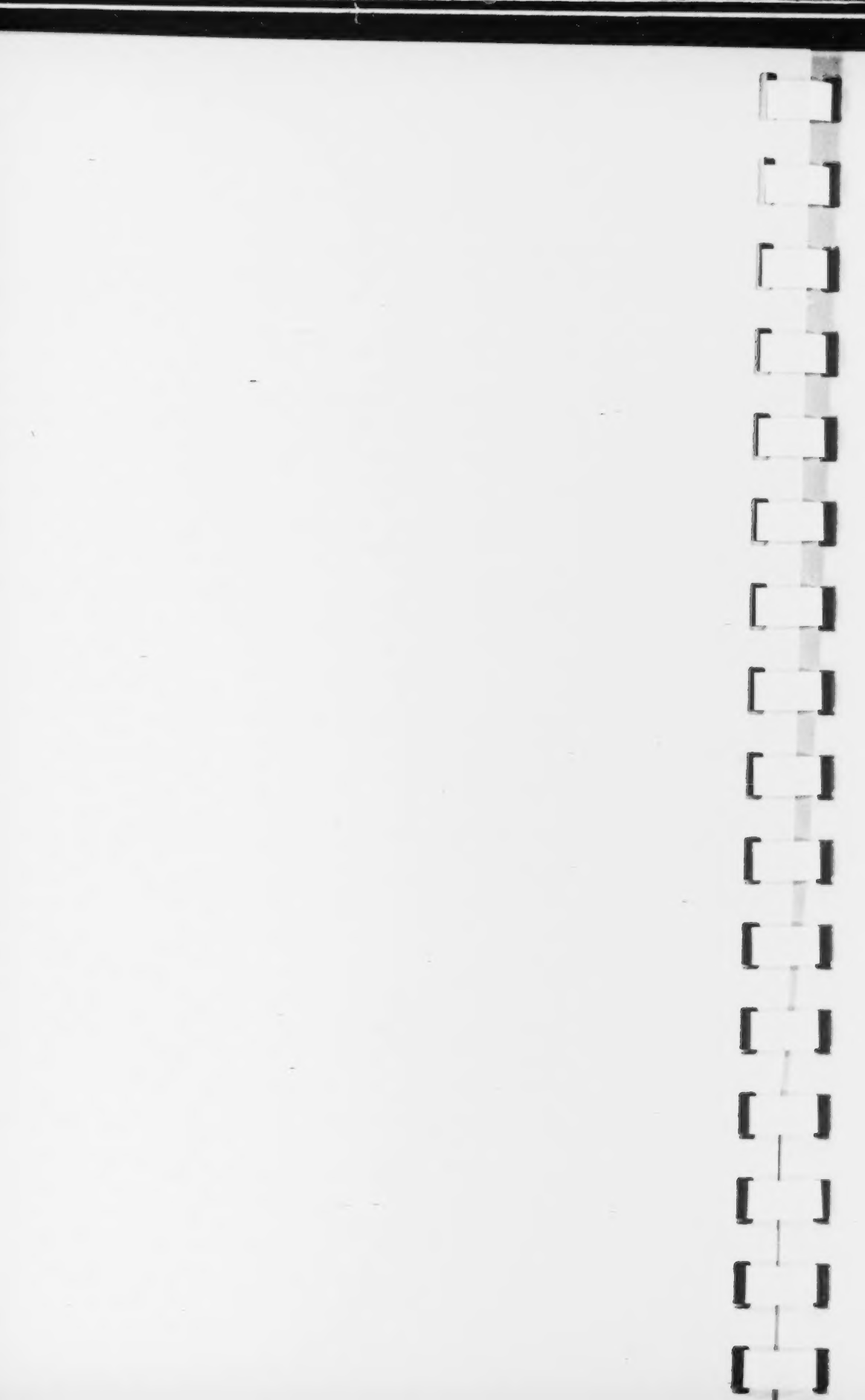
V. No official or unofficial report

VI. Concise Statement of the grounds on which Jurisdiction of this Court is invoked

A. The date of the judgment or decree

B. No rehearing was sought

C. Jurisdiction of this court



D. Concise Statement of facts

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(1) because the removal petition  
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- V. No official or unofficial report  
has been made of the case below
- VI. Concise statement of the grounds  
on which jurisdiction of this  
Court is invoked
  - A. The date of the judgment or  
decree sought to be reviewed  
is November 16, 1987; the time  
of its entry is unknown.
  - B. No rehearing was sought.
  - C. Jurisdiction of this Court to  
review the judgment or decree  
in question by writ of Pro-  
hibition or Mandamus is in-  
herent since every Court has  
not only jurisdiction, but the  
positive duty to determine if it



has subject matter jurisdiction. In the instant case, this Court has the positive duty to prohibit the lower federal Courts from exercising jurisdiction since they are absent all such by reason of the fatally defective removal petition and bond filed by defendant in the Federal District Court for the Eastern District of Michigan, Southern Division. From no other Court than this Court can the relief sought be obtained because no other than this court has superintending control over the U. S. Court of Appeals for the Sixth Circuit.

- D. A concise statement of the case containing the

[illegible]

facts material to a consideration of the question presented are as follows: Defendant's fatally defective removal petition and bond (set forth in full in the annexed Appendix) are all the "facts" necessary to decide the sole issue involved in these proceedings.

E. Argument re no subject matter jurisdiction in the lower federal Courts.

(1) Because the removal petition is fatally defective.

(2) Because the bond is fatally defective.

#### ARGUMENT - INTRODUCTION

The instant proceedings before the United States Supreme Court are in the nature of mandamus proceedings to obtain a writ



of mandamus or prohibition to prevent the usurpation of jurisdiction that has occurred to date in this removal diversity case where defendant's removal petition (see Appendix page A-2" through "A-4") or bond (see Appendix pages "A-5" and "A-6") or both are so fatally defective as to fail to confer jurisdiction upon the federal district court where same were filed.

By means of the instant case the United States Supreme Court should send a message to the lower federal courts which continually complain of being bogged down with work including strictly state court matters to divest themselves of jurisdiction in diversity removal cases where the removal petition or bond or both are fatally defective in failing to set forth adequate facts so that federal jurisdiction affirmatively appears on the record at the time of removal. In the instant case,

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one of the judges on the panel of the Court of Appeals which heard oral argument in the case opined that defendant's removal petition could be cured upon remand to the district court via an evidentiary hearing! He further opined that since it appeared that it could be such evidentiary hearing would not be necessary. Mentality like this pervades the federal judiciary!

Defendant's fatally defective removal petition and bond are set forth in full in the Appendix annexed hereto (see Appendix pages "A-2" through "A-6").

Plaintiff commenced a strictly state court cause of action in state court and defendant pretended to remove same to federal court though it used a fatally defective removal petition and a fatally defective bond.



In spite of the continual complaint of the federal judiciary of their being overworked from a glut of diversity removal cases, their sincerity is compromised by a case like the present where, in the absence of all jurisdiction, they decided (improperly at that, to be sure) same on its merits, whereas, they were duty bounden to deny subject matter jurisdiction and remand the case back to state court where it originated and belongs exclusively. Plaintiff's right to prosecute his state tort action in state court became vested (and incapable of being divested) 30 days after filing his strictly state court action in state court notwithstanding defendant's fatally defective removal petition and fatally defective bond.

The lower federal courts refused to decide the question. A preliminary

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panel of the court of appeals (see Appendix Pages "A-8" and "A-9") said that plaintiff did not raise the question timely (as if jurisdiction cannot be raised at any time), while the panel of the court of appeals that decided the merits of the case (erroneously at that) (see Appendix Page "A-10") falsely pretended that the question did not exist.

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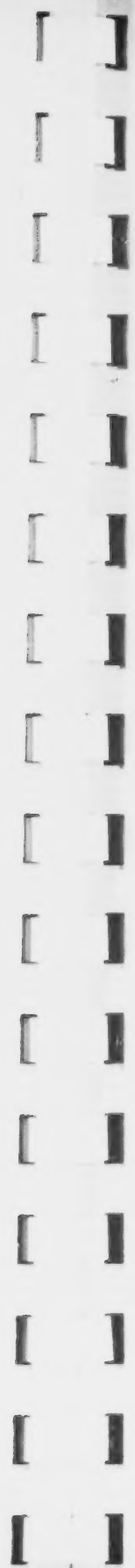
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ARGUMENT SECTION "E(1)" Re THE FATALLY  
DEFECTIVE REMOVAL PETITION

Defendant's removal petition is so fatally defective that the federal court has no discretion but to "refuse to proceed" in the instant case. For example, there is absolutely no averment whatsoever in defendant's removal petition as to the citizenship of the parties at the time of the commencement of plaintiff's suit in state court, to wit: On September 13, 1985. Defendant's removal petition is in the present tense and covers only the time of the filing of the petition for removal, to wit: on October 7, 1985.

It is absolutely essential that the citizenship of the parties at both critical times, be alleged; i.e., at the time of filing the petition for removal and at the time of the commencement of plaintiff's suit.

"...an action may not be removed from a state to a Federal court on the ground of diversity of citizenship at the time of filing the petition for removal unless such diversity also existed at the time of the commencement of the suit. Gibson v. Bruce, 108 U.S. 561, 2 S.Ct. 873, 27



L.Ed. 825; Houston & Texas Central R. Co. v Shirley, 111 U.S. 358, 4 S.Ct. 472, 28 L.Ed. 455; Akers v Akers, 117 U.S. 197, 6 S.Ct. 669, 29 L.Ed. 888." p. 18 of Washington et al v Roberts & Schaefer Co. 180 F.Supp. 15.

"It appears from the record that the citizenship of the parties at the commencement of the actions, as well as at the time the petitions for removal were filed, was not sufficiently shown, and that therefore the jurisdiction of the state court was never divested. Stevens v Nichols, 130 U.S. 230, 9 S.Ct. 518; 32 L.Ed. 914; This being so, the defect cannot be cured by amendment. Crehore v Ohio & Mississippi Railroad Co., 131 U.S. 240, 9 S.Ct. 692; 33 L.Ed. 144."

Since 1958 Congress has purposely restricted the right of removal (than formerly) by amendment of the pertinent statute so that a corporation is deemed to be a citizen of "any State" in which it is incorporated or in which it has a principal place of business. Since a corporation can be incorporated in more than one state and can also have a principal place of business in more than one state, it was imperative upon defendant, in its removal petition, to negate the possibility that at both critical times (that is, at the time of commencement of



plaintiff's suit in state court as well as at the time of removal to federal court) it was not incorporated in Michigan (of which plaintiff is a citizen) as well as in Georgia and that it did not have a principal place of business in Michigan as well as in Georgia. That defendant failed to do. Defendant said absolutely nothing as to the citizenship of the parties at one of the critical times, to wit: at the time of the commencement of plaintiff's suit in state court. At the other critical time, to wit: at the time of the filing of the removal petition, defendant corporation does not negate the possibility that it was incorporated in Michigan as well as in Georgia or that it had a principal place of business in Michigan as well as in Georgia. In other words, what defendant says in its removal petition can be accepted as true, that is, that at the time of the filing of its removal petition on October 7, 1985, plaintiff was a citizen of Michigan and defendant was a citizen of Georgia without negating the possibility that on that same date



defendant was also incorporated in Michigan as well as in Georgia or that it had a principal place of business in Michigan as well as in Georgia.

What was said in Wells v Celanese Corporation of America 239 F Supp 603 is also applicable in the instant case:

"It appears nowhere in this record that the defendant is not incorporated by Tennessee (by Michigan in the instant case) or that its principal place of business is not in Tennessee (in Michigan in the instant case); so, the possibilities existed, at both times critical to this determination, that the defendant may have been incorporated by Tennessee (in Michigan in the instant case) and may have had its principal place of business in Tennessee (in Michigan in the instant case), of which state, at both times, the plaintiff was a citizen. The necessary diversity of citizenship of the litigants, therefore, has not been pleaded, and the time for supplying corrective amendments has elapsed. F. & L. Drug Corp. v American Central Ins. Co., D.C. Conn. (1961), 200 F.Supp. 718. Therefore, this Court's jurisdiction is limited to a determination of its own jurisdiction



and the power to remand the case to the state court whence it came if it appears that the action was removed improvidently and without jurisdiction. 28 U.S.C. Sec. 1447(c); In Re MacNeil Bros. Co., C.A.1st (1958), 259 F.2d 386; McMahon v Fontenot, D.C. Ark., (1963), 212 F.Supp. 812; Orleans Materials & Equipment Co. v Isthmian Lines Inc., D.C.La. (1963), 213 F. Supp. 325. P. 604 of Wells v Celanese et al 239 F. Supp. 603.

Likewise is the following applicable which was said in Wells v Celanese, supra:

"For the purpose of the removal statute, 28 U.S.C. Sec. 1441(b), which governs this action, "...a corporation shall be deemed a citizen of any State by which it has been incorporated and of the State where it has its principal place of business."

(emphasis supplied) 28 U.S.C. Sec. 1332(c) Thus, before the plaintiff could be deprived of the jurisdiction of the state court he selected in which to bring this action, it was essential that the defendant allege, inter alia, in its removal petition sufficient facts to demonstrate that, at both the time of the commencement of the plaintiff's action and the time the defendant filed its removal petition the plaintiff and defendant were not citizens of the same state. This is of the essence of jurisdiction in this court and, being essential, the absence of such allegations can neither be overlooked nor supplied by inference. La Belle Box Co. v Stricklin, C.C.A.6th (1914), 218 F. 529, 533. P. 604 of Wells v Celanese et al 239 F. Supp. 603.



The Richmond case (Richmond F & P.R. CO. v Intermodal Services 508 F Supp 804) is to the same effect. Defendant attempts to distinguish the Richmond case by saying that the removal petition "failed to state the principal place of business of the petitioning party". But the court considered that even if the cover sheet (which stated the defendant's principal place of business at the time of the filing of the removal petition) were a part of the record, the removal petition would still be fatally defective because:

"...it does not negate the possibility that defendant has a principal place of business in Virginia (in Michigan in the instant case) as well as in Georgia. Thus, the cover sheet does not supply the missing allegation in form or in substance required by the removal statutes. P. 808 of Richmond, F & P. R. Co. v Intermodal Services, 508 F.Supp.

The court in the Richmond case recognized that defendant's failure to "negate the possibility that defendant had a principal place of business in Virginia (in Michigan in the instant case) as well as in Georgia" was the omission



of an essential fact necessary to justify removal since the 1958 amendment makes a corporation a citizen of "any state" in which it is incorporated or has a principal place of business (and it may be incorporated in more than one state and likewise have a principal place of business in more than one state).

The court in the Richmond case cited with approval the rule that all statutory requisites of diversity jurisdiction must be alleged at least imperfectly in the original petition for removal, otherwise the petition may not be amended after expiration of the thirty (30) day removal period.

"But where the essential facts necessary to justify removal are not alleged, either perfectly or imperfectly, then the case must be remanded. (Citations omitted).

F & L Drug Corp. v American Central Ins. Co. 200 F.Supp 718. P. 806 of Richmond, F & P.R.Co. v Intermodal Services, 508 F.Supp.

Clearly, the Richmond case is indistinguishable in principle from the case at bar.

The exercise of removal jurisdiction when based on diversity is in derogation of state



sovereignty. Thompson v Gillen 491 F Supp 24. Since a removal petition functions as an ex parte divestiture of the jurisdiction of a court of general jurisdiction (in the instant case the Circuit Court for the County of Wayne) it, like the statute upon which it is based, is to be "strictly construed against removal." Shamrock Oil & Gas Corporation v Sheets 313 US 100, 108; 61 S Ct 868; 85 L Ed 1214.

In a removal petition, as distinct from an original complaint, considerations of state sovereignty, comity, and traditional judicial respect for the jurisdiction of other courts invoke the rule of caution on questions of confliction jurisdiction, Metcalf Bros. & Co. v Barker, 187 US 165, 176, 23 S Ct 67, 47 L Ed 122 (1902).

"The course of the court is,... on its own motion to reverse a judgment for want of jurisdiction not only in cases where it is shown negatively by a plea to the jurisdiction that jurisdiction does not exist but even when

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it does not appear affirmatively that it does exist Pequignot v The Penn. Railroad Co. 16 How 104. It acts upon the principle that the judicial power of the United States must not be exerted in a case to which it does not extend, even if both parties desire to have it exerted. p. 384 of Mansfield, Coldwater et al v Swan 111 US 379; 45 S Ct 510 28 L Ed 412.

It is the duty of any federal court, trial or appellate, not to proceed with a case after defects in jurisdiction come to its attention, by motion of the parties or otherwise, until the defects have been cured. Emmons v Smith 149 F 2d 869 (CA 6).

There is always a presumption against jurisdiction. Bell v Gray 191 F Supp 328; affirmed 287 F 2d 410 (CA 6).

Questionable cases of federal removal jurisdiction should be remanded to state courts. -- Young Spring and Wire v American Guarantee and Liability Ins. 220 F Supp 222; Eubanks v Krispy Kreme Donut 208 F Supp 479; and Browne v Hartford Fire Ins. 168 F Supp 796.

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"Due regard for the rightful independence of state governments, which should actuate federal courts, requires that they scrupulously confine their own jurisdiction to the precise limits which the statute has defined". P. 603 of Wells v Celanese Corp. of America, 239 F.Supp. 603.

Since the 1958 amendment requiring a "verified petition" it is the petition, by itself, which must allege sufficient facts to demonstrate that at both the time of the commencement of plaintiff's action and the time defendant filed its removal petition, the plaintiff and defendant were not citizens of the same state.

Otherwise, plaintiff cannot be deprived of the jurisdiction of the state court he selected in which to bring his action.

The pertinent law (28 USC 1332) says:

"...a corporation shall be deemed a citizen of any state by which it has been incorporated and of the State where it has its principal place of business."

Since any corporation can be incorporated in more than one State and likewise have a



principal place of business in more than one State and the statute says "any State," it was absolutely incumbent upon defendant to cover both times critical to a removal petition (to wit: the time of commencement of plaintiff's action in state court and the time of removal of the action to federal court) and for each such time to negate the possibility that defendant has a principal place of business in Michigan as well as in Georgia and to further negate the possibility that defendant is incorporated in Michigan as well as in Georgia.

The cripple here (defendant's fatally defective removal petition) says far too little. It is in the present tense and covers only the time (October 7, 1985) it filed its removal petition; it does not cover the time of commencement of plaintiff's action (September 18, 1985)<sup>1</sup>.

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footnote 1.

This requirement of pleading diversity at the time of commencement of plaintiff's cause of action has been in the Federal Judicial Code from ancient times. Insurance Co. v Pechner 95 US 183; 24 L Ed 422. Defendant's blaise attempt to distinguish this case (i.e., that it dealt with Sec. 12 of the Judiciary Act of 1789) is clearly inapposite.

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What it says can be accepted as true, i.e., that plaintiff is a citizen of Michigan and that it is a citizen of Georgia, without negating the possibility at both times critical to the required determination (of whether plaintiff's vested right to remain in state court has been divested) that defendant is incorporated in Michigan as well as in Georgia and has a principal place of business in Michigan as well as in Georgia.

In the cases cited herein, where removal jurisdiction had to be denied on the basis of insufficient allegations in the removal petition, the courts recognize the effect of the 1958 amendment which says "any State" so that it is a missing allegation<sup>2</sup> for defendant not to negate the possibility of it also having (in addition to Georgia) a principal place of business in Michigan. Hence the Richmond case is indistinguishable in principle from the case at bar.

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footnote 2

which cannot be supplied by amendment. F&L Drug Corp. v American Central Ins. Co. 200 F Supp 718



Consequently, defendant's failure to state the citizenship of the parties at the time plaintiff commenced his suit in state court on September 18, 1985 is such a fatal defect in its removal petition so as to require remand of the instant case to state court. Likewise, defendant's failure to negate the possibility that at both times critical it was not incorporated in Michigan as well as in Georgia is also such a fatal defect in its removal petition as to require remand of the instant case to state court. As if the foregoing defects were not enough, defendant's failure to negate the possibility that at both times critical it did not have a principal place of business in Michigan as well as in Georgia is also such a fatal defect in its removal petition as to require remand of the instant case to state court.

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ARGUMENT SECTION "E(2)" Re THE FATALLY  
DEFECTIVE REMOVAL BOND

The bond is executed by Attorney Ecclestone who is obviously without authority to bond for his client. Defendant corporation has ample agents with unquestioned authority to do this. Moreover, the bond is unilaterally limited to \$250.00 and therefore does not meet the requirement of the statute to pay "all costs and disbursements" incurred by reason of the removal proceedings should it be determined that the case was not removable or was improperly removed.

A bond which does not fulfill the requirements of the statute is so fatally defective that, in principle, it is the same as no bond at all. What was said by the court in Austin v Gugin 39 Fed 626 of a "radically defective" bond is applicable here:



"In judgment the court cannot dispense with any substantial condition after the time for removal has expired, and the right of the other party has attached. For all of the various reasons indicated, a removal was not effected. The cause must therefore be remanded with costs and it is so ordered."

Similarly, in Webber v Bishop et al

13 Fed 49 it was said of a similary defective bond which did not contain the required provision as to costs:

"The defendants contend that this is a fatal omission, affecting the jurisdiction of this court; that it is not a mere irregularity, or a defect that can be cured by amendment."

"There is apparently, no distinction in principle between the case of Torrey v Grant Works and the case at bar. The reasoning in that case is decisive of the question here involved."

"The question being one of jurisdiction, the defendants can at all times take advantage of the defect. Should the case remain and the plaintiff succeed, if confronted with the same objection in the supreme court, it might lead to a reversal of his judgment."

As said in Webber, there is no distinction in principle between the Webber



case and the case at bar. The principal on the bond is Attorney Ecclestone who manifestly lacks authority to bond for his client and here the bond does not meet the requirement of the statute to pay "all costs and disbursements" without any arbitrary upper limit. In the case at bar, there is manifest lack of authority in Attorney Ecclestone to bond for his client and the bond is in defiance to the statute which requires it to pay "all costs and disbursements" without any upper limit arbitrarily selected unilaterally by the obligor.

The Power of Attorney Secretary James S. Wyllie pretends to have executed on October 7, 1985 (see Appendix pages "A-6b" through "A-6i") was physically present in the State of Michigan on that date (October 7, 1985) while he, James S. Wyllie, was physically present in the state of Pennsylvania on that date (October 7, 1985).



Thus, he could not possibly have "subscribed" and "affixed the corporate seal" on that date as falsely represented by said Power of Attorney. The invalidity of said Power of Attorney follows, ipso facto, from its falsity in pretending that it was executed on October 7, 1985 by said Wyllie (who was physically present in the state of Pennsylvania on that date) and that it was also executed on the same date by Carol Allen in Troy, Michigan and filed on the same date in a federal district court in Michigan.

WHEREFORE, the case should be dismissed and remanded to the State Court by reason of total lack of subject matter jurisdiction in the lower federal courts. The order of remand should make amends to the plaintiff for the improvident opinion on the merits expressed by the federal district court and for his losses on account of the wrongful removal.

Respectfully submitted,  
Leonard J. Zepke,  
Petitioner in pro per



VII. APPENDIX

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Petition for Removal

Bond for Removal

Order Granting Summary Judgment

Court of Appeals' Order of January  
22, 1987

Court of Appeals' Judgment or  
Decree of November 16, 1987

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

LEONARD J. ZEPKE,

Plaintiff

vs.

CRAWFORD & COMPANY, a  
Georgia Corporation,

Defendant

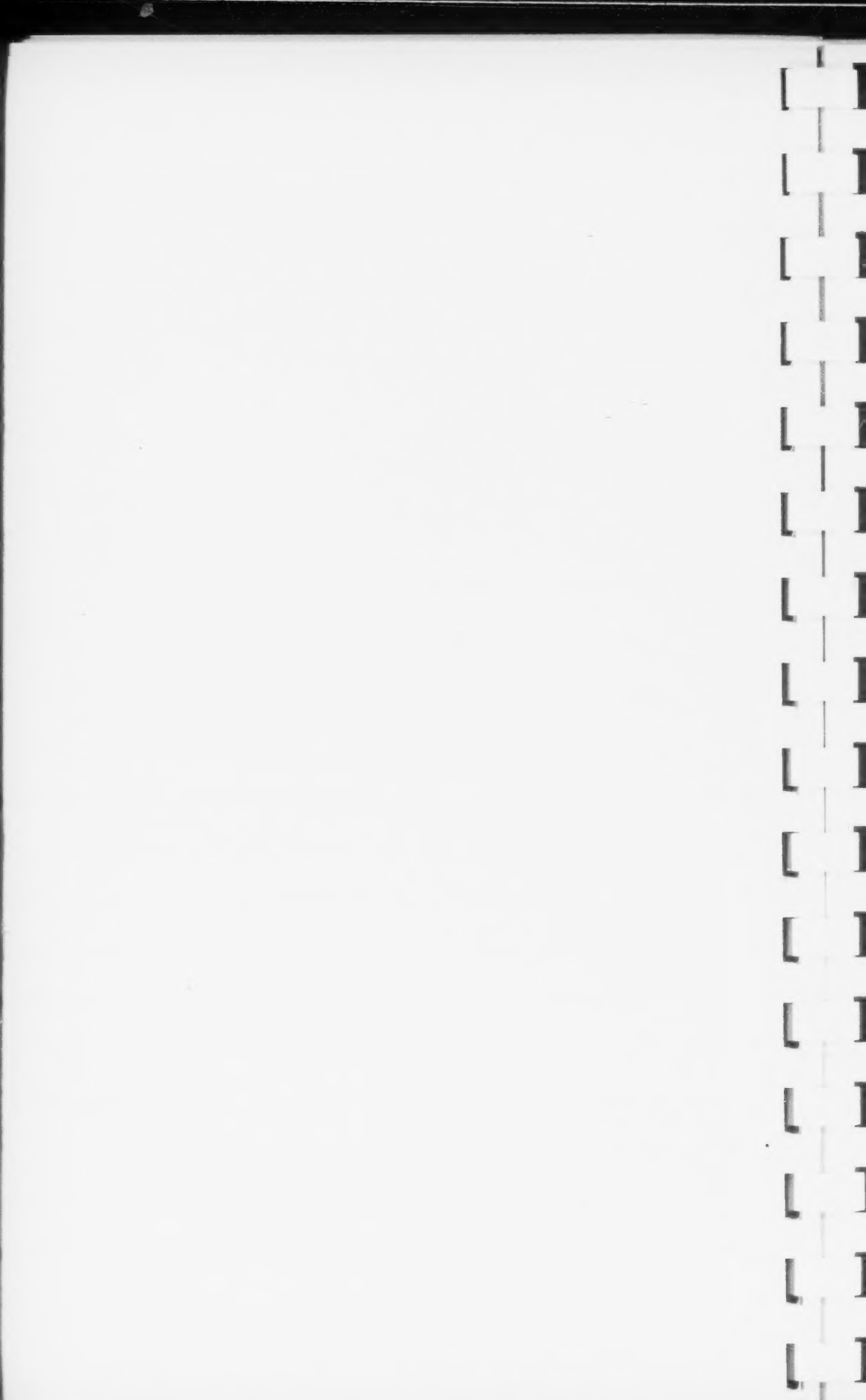
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PETITION FOR REMOVAL

TO: JUDGES OF THE UNITED STATES DISTRICT  
COURT EASTERN DISTRICT OF MICHIGAN,  
SOUTHERN DIVISION

Defendant, CRAWFORD & COMPANY, a Georgia corporation, by and through its Attorneys, Ecclestone, Moffett & Humphrey, P.C., hereby petitions this Court pursuant to 28 USC 1441 for Removal of this cause to the United States District Court for the Eastern District of Michigan, Southern Division, and in support thereof states:

1. That on or about September 18, 1985, an action was commenced against the Petitioner



in the Circuit Court for the County of  
Wayne, State of Michigan, entitled:

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

LEONARD J. ZEPKE,  
Plaintiff

No. 85 524 346 CZ  
Hon. Arthur Bowman

vs.

CRAWFORD & COMPANY,  
Defendant

2. That a copy of the Summons and Complaint were served upon Crawford & Company's resident agent, CT Corporation System, on or about September 20, 1985. A copy of the Summons and Complaint in the Wayne County Circuit Court action is attached hereto and incorporated herein by reference.

3. That the Petitioner, Crawford & Company, is a Foreign Corporation, incorporated in the State of Georgia, with its principal place of business in Atlanta, Georgia, and, accordingly, is a citizen for the State of Georgia, for the purposes of Federal Court jurisdiction.

4. That the Plaintiff, LEONARD J. ZEPKE, is, upon information and belief, a citizen of



the City of St. Clair Shores, County of Macomb, and State of Michigan.

5. That by virtue of Paragraph 2, in the attached Complaint issued by the Plaintiff, it is asserted that the controversy in this matter exceeds Ten Thousand and 00/100 Dollars (\$10,000.00).

6. That this Honorable Court has original jurisdiction in this cause based on diversity of citizenship between the Plaintiff and Defendant and removal is proper pursuant to 28 USC 1441.

WHEREFORE, Petitioner prays that the entitled action now pending in the State of Michigan, Circuit Court for the County of Wayne, be removed to the United States District Court, Eastern District of Michigan, Southern Division.

ECCLESTONE, MOFFETT & HUMPHREY, P.C.

BY \_\_\_\_\_

DATED: October 7, 1985 .



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

LEONARD J. ZEPKE,

Plaintiff

vs.

CRAWFORD & COMPANY, a  
Georgia Corporation,

Defendant

---

BOND FOR REMOVAL

STATE OF MICHIGAN )  
                              ) ss:  
COUNTY OF OAKLAND )

KNOW ALL MEN BY THESE PRESENTS that we,  
CRAWFORD & COMPANY, As Principal, and THE IN-  
SURANCE COMPANY OF NORTH AMERICA, A Pennsylvania  
Corporation, As Surety, are held and firmly  
bound unto LEONARD J. ZEPKE, in the amount of  
TWO HUNDRED FIFTY and 00/100 DOLLARS (\$250.00)  
for the payment of which well and truly be made,  
we, and each of us, bind ourselves, our succ-  
essors, and assigns, jointly and severally,  
by these presence.



WHEREAS, the said CRAWFORD & COMPANY, has petitioned the United States District Court for the Eastern District of Michigan, Southern Division, for the Removal to said court an action now pending in the Wayne County Circuit Court of the State of Michigan, in and for the County of Wayne, wherein LEONARD J. ZEPKE, is the Plaintiff and CRAWFORD & COMPANY, a Georgia Corporation, is the Defendant, and being numbered civil action #85-524-346 CZ, upon the docket thereof;

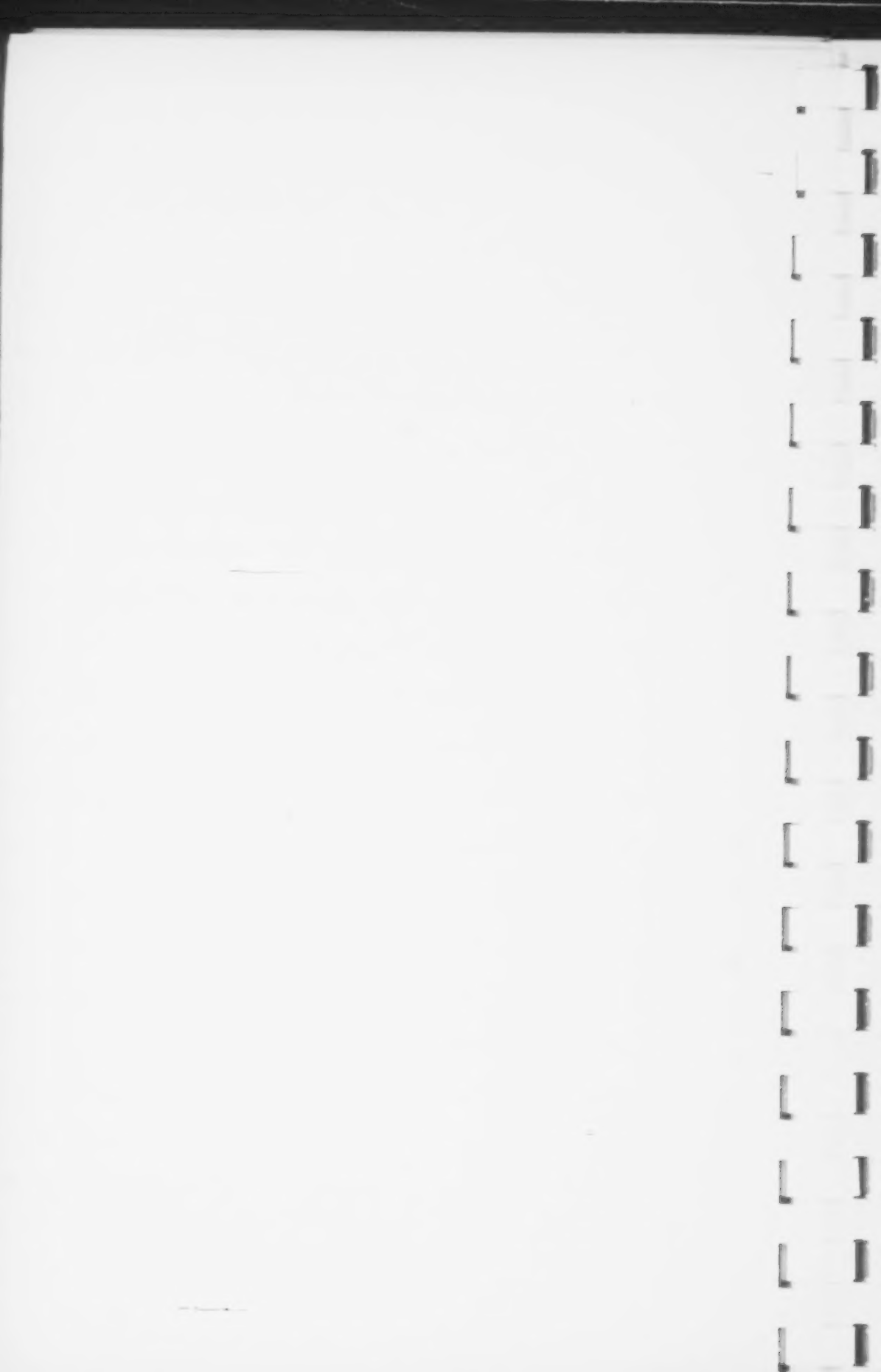
NOW, THEREFORE, the condition of the above obligation is such that said CRAWFORD & COMPANY shall pay all costs and disbursements incurred by reason of said removal proceedings if it should be determined that the said action was not removable or was improperly removed.

WITNESS OUR HANDS AND SEALS this 7th day of October, 1985.

INSURANCE  
COMPANY OF  
NORTH AMERICA  
A Pennsyl-  
vania Corp.  
By: Carol Allen

CRAWFORD & COMPANY, a Georgia  
Corporation

By FREDERICK G. ECCLESTONE  
ECCLESTONE, MOFFET ET AL, P.C.  
Its Attorneys



N.B. On pages 6d through 6i is set forth in readable type the full text of the Power of Attorney (reproduced on page ("A-6c" following) filed by Crawford and Company with its fatally defective removal bond.



POWER OF ATTORNEY

Insurance Company of North America  
a CIGNA company



**Know all men by these presents:** That **INSURANCE COMPANY OF NORTH AMERICA**, a corporation of the Commonwealth of Pennsylvania, having its principal office in the City of Philadelphia, Pennsylvania, pursuant to the following Resolution adopted by the Board of Directors of the said Company on March 23, 1977, to wit:

RESOLVED, pursuant to Articles 3.9 and 5.7 of the By-Laws, the following Rules shall govern the execution for the Company of bonds, undertakings, recognizances, contracts and other writings in the nature thereof:

- (1) That the President, or any Executive Vice-President, Senior Vice-President, Vice-President, Assistant Vice-President, Resident Vice-President or Attorney-in-Fact, may execute for and in behalf of the Company any and all bonds, undertakings, recognizances, contracts and other writings in the nature thereof, the same to be attested when necessary by the Secretary or a Resident Secretary, an Assistant Secretary or a Resident Assistant Secretary and the seal of the Company affixed thereto; and that the President, or any Executive Vice-President, Senior Vice-President or Vice-President may execute and authorize Assistant Vice-Presidents, Resident Vice-Presidents, Secretaries, Resident Secretaries, Assistant Secretaries, Resident Assistant Secretaries and Attorneys-in-Fact to so execute or cause to be executed all of such writings on behalf of the Company and to affix the seal of the Company thereon;
- (2) Any such writing executed in accordance with these Rules shall be as binding upon the Company in any case as though signed by the President and attested by the Secretary;
- (3) The signature of the President, or an Executive Vice-President, or Senior Vice-President, or Vice-President and the seal of the Company may be affixed by persons on any power of attorney granted pursuant to this Resolution, and the signature of a certifying officer and the seal of the Company may be affixed by persons to any certificate of any such power, and any such power or certificate bearing such persons' signature and seal shall be valid and binding on the Company;
- (4) Such Assistant Vice-Presidents, Secretaries, Assistant Secretaries, Resident Officers and Attorneys-in-Fact shall have authority to certify or verify copies of this Resolution, the By-Laws of the Company, and any affidavit or record of the Company necessary to the discharge of their duties;
- (5) The passage of this Resolution does not revoke any similar authority granted by Resolutions of the Board of Directors adopted on June 9, 1983 and May 28, 1976.

does hereby nominate, constitute and appoint **CAROL A. ALLEN, J.K. TRANZOW, L.P. MARVIN, T.A. TORZEWSKI, JOHN F. GARDINER, JR., WILLIAM J. REUTTER, WILLIAM A. PIRRET, and RICHARD G. THOMAS**, all of the City of Troy, State of Michigan

each individually if there be more than one named, its true and lawful attorney-in-fact, to make, execute, seal and deliver on its behalf, and as its act and deed any and all bonds, undertakings, recognizances, contracts and other writings in the nature thereof. And the execution of such writings in pursuance of these presents, shall be as binding upon said Company, as fully and amply as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its principal office.

IN WITNESS WHEREOF, the said H. F. MC CRANIE, JR., Vice-President, has hereunto subscribed his name and affixed the corporate seal of the said **INSURANCE COMPANY OF NORTH AMERICA** this 25th day of October, 19 83

(SEAL)



STATE OF PENNSYLVANIA  
COUNTY OF DELAWARE

On this 25th day of October, A.D. 19 83, before me, a Notary Public of the COMMONWEALTH OF PA in and for the County of DELAWARE came H. F. MC CRANIE, JR. Vice-President of the **INSURANCE COMPANY OF NORTH AMERICA** to me personally known to be the individual and officer who executed the preceding instrument, and he acknowledged to me that he executed the same, and that the seal affixed to the preceding instrument is the corporate seal of said Company; that the said corporation and his signature were duly affixed by the authority and direction of the said corporation, and that Resolution, adopted by the Board of Directors of said Company, referred to in the preceding instrument, is now in force.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at the City of RADNOR the day and year first above written.

(SEAL) **NOTARY PUBLIC**

ANDRE W. COSGROVE - Notary Public  
Erin Moore, Delaware County, PA  
My Commission Expires Sept. 21, 1987

I, James A. McCallie, Assistant Secretary of **INSURANCE COMPANY OF NORTH AMERICA**, do hereby certify that the original POWER OF ATTORNEY, of which the foregoing is a full, true and correct copy, is in full force and effect.

In witness whereof, I have hereunto subscribed my name as Assistant Secretary, and affixed the corporate seal of the Corporation, this 25th day of October, 19 83.

(SEAL)



James A. McCallie  
JAMES A. MCCALLIE Assistant Secretary



POWER OF ATTORNEY INSURANCE COMPANY OF  
NORTH AMERICA, A CIGNA COMPANY

Know all men by these presents: That INSURANCE COMPANY OF NORTH AMERICA, a corporation of the Commonwealth of Pennsylvania, having its principal office in the City of Philadelphia, Pennsylvania, pursuant to the following Resolution adopted by the Board of Directors of the said Company on March 23, 1977, to wit:

"RESOLVED, pursuant to Articles 3, 6 and 5.1 of the By-Laws, the following Rules shall govern the execution for the Company of bonds, undertakings, reconizances, contracts and other writings in the nature thereof:

- (1) That the President, or any Executive Vice President, Senior Vice President, Vice President, Assistant Vice President, Resident Vice President or Attorney in Fact, may execute for and



in behalf of the Company any and all bonds, undertakings, recognizances, contracts and other writings in the nature thereof, the same to be attested when necessary by the Secretary, or a Resident Secretary, an Assistant Secretary or a Resident Assistant Secretary and the seal of the Company affixed thereto; - and that the President, or any Executive Vice President, Senior Vice President, or Vice President may appoint and authorize Assistant Vice Presidents, Resident Vice Presidents, Secretaries, Resident Secretaries , Assistant Secretaries, Resident Assistant Secretaries and Attorneys-in-Fact execute or attest to the execution of all such writings on behalf of the Company and to affix the seal of the Company thereto.

- (2) Any such writing executed in accordance with these Rules shall be as binding

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upon the Company in any case as though signed by the President and attested by the Secretary.

- (3) The signature of the President, or an Executive Vice President, or Senior Vice President, or Vice President and the seal of the Company may be affixed by facsimile on any power of attorney granted pursuant to this Resolution, and the signature of a certifying officer and the seal of the Company may be affixed by facsimile to any certificate of any such power, and any such power or certificate bearing such facsimile signature and seal shall be valid and binding on the Company.
- (4) Such Assistant Vice Presidents, Secretaries, Assistant Secretaries, Resident Officers and Attorneys-in-Fact shall have authority to certify or verify copies of this Resolution, the By-Laws

[illegible]

of the Company, and any affidavit or record of the Company necessary to the discharge of their duties.

- (5) The passage of this Resolution does not revoke any earlier authority granted by Resolutions of the Board of Directors adopted on June 9, 1953 and May 28, 1975."

does hereby nominate, constitute and appoint CAROL A. ALLEN, J.K. TRANZOW, L.P. MARVIN, T.A. TORZEWSKI, JOHN F. GARDINER, JR., WILLIAM A. PIRRET, and RICHARD G. THOMAS, all of the City of Troy, State of Michigan, each individually if there be more than one named, its true and lawful attorney-in-fact, to make, execute, seal and deliver on its behalf, and as its act and deed any and all bonds, undertakings, recognizances, contracts and other writings in pursuance of these presents, shall be as binding upon said Company, as fully and amply as if they had been duly executed and acknowledged by the regularly elected officer of the Company at its principal office.

I H I H I H I H I H  
I H I H I H I H I H

L L L L L L L L L L  
L L L L L L L L L L

IN WITNESS WHEREOF, the said H. F. MC CRANIE, JR., Vice-President, has hereunto subscribed his name and affixed the corporate seal of the said INSURANCE COMPANY OF NORTH AMERICA this 25th day of October 1983.

(SEAL)

INSURANCE COMPANY OF  
NORTH AMERICA

by /s/  
H.F. MC CRANIE, JR.  
Vice President

STATE OF PENNSYLVANIA

COUNTY OF DELAWARE            ss.

On this 25th day of October, A.D. 1983, before me, a Notary Public of the COMMONWEALTH OF PA in and for the County of DELAWARE came H.F. MC CRANIE, JR., Vice-President of the INSURANCE COMPANY OF NORTH AMERICA to me personally known to be the individual and officer who executed the preceding instrument, and he acknowledged that he executed the same, and that the seal affixed to the preceding instrument is the corporate seal of said Company; that the said corporate seal and his signature were duly affixed by the authority and direction of the said corporation, and that Resolution



adopted by the Board's Directors of said Company, referred to in the preceding instrument, is now in force.

INTESTAMONY WHEREOF, I have hereunto set my hand and affixed my official seal at the City of RADNOR the day and year first above written.

(SEAL)

/s/ \_\_\_\_\_  
ANNE W. COSGROVE  
Notary Public

I, the undersigned, ~~Assistant~~ Secretary of INSURANCE COMPANY OF NORTH AMERICA, do hereby certify that the original POWER OF ATTORNEY, of which the foregoing is a full, true and correct copy, is in full force and effect.

In witness whereof, I have hereunto subscribed my name as ~~Assistant~~ Secretary, and affixed the corporate seal of the Corporation this 7th day of October 1985.

(SEAL)

/s/ \_\_\_\_\_  
JAMES S. WYLLIE  
~~Assistant~~ Secretary



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
DETROIT, MICHIGAN

LEONARD J. ZEPKE,

Plaintiffs, -

Civil Action No.  
85-4644

V

CRAWFORD & COMPANY,

Defendants,

---

JUDGMENT

At a SESSION of said Court,  
held in the City of Detroit,  
State of Michigan, on  
August 11, 1986 .

PRESENT: THE HONORABLE GEORGE  
E. WOODS, UNITED STATES  
DISTRICT JUDGE

The Court having issued an Order Granting  
Summary Judgment in favor of Defendant, Crawford  
& Company, now, therefore,

IT IS HEREBY ORDERED AND ADJUDGED that  
defendant's Motion for Summary Judgment is  
Granted and plaintiff's complaint is DISMISSED.

So ordered.

TO: WILLIAM L. FISHER & FREDERICK G. ECCLESTONE, Esq.  
GEORGE E. WOODS, UNITED STATES  
DISTRICT JUDGE



No. 86-1745

UNITED STATES COURT OF APPEALS FOR THE SIXTH  
CIRCUIT

Leonard J. Zepke,

Plaintiff-Appellant,

V.

ORDER

Crawford & Company,

Defendant-Appellee

---

BEFORE: KEITH, KRUPANSKY and GUY, Circuit  
Judges

Plaintiff Zepke moves to vacate the summary judgment granted by the district court below for lack of diversity jurisdiction and to remand the case to state court for further proceedings. Although styled as a motion to vacate, plaintiff's motion is clearly an untimely attempt to appeal from the district court's order of April 9, 1986 which denied his motion to remand. Fed. R. App. P. 4(a)(1). Plaintiff argued in the court below and again in his motion that removal was improvidently granted because defendant had a principal place of



business in Michigan, the plaintiff's home state. We do not reach that issue because an untimely appeal deprives the Court of jurisdiction. Browder v Director, Ill. Dept. of Corrections, 434 U.S. 257 (1978); E.E.O.C. v K-Mart Corp., 694 F 2d 1055 (6th Cir. 1982).

It is ORDERED that the motion to vacate the judgment and to remand the case to state court for further proceedings is denied. It is further ORDERED that plaintiff's motion to stay proceedings in district court is denied.

ENTERED BY ORDER OF THE COURT

---

Clerk



No. 86-1745

UNITED STATES COURT OF APPEALS FOR  
THE SIXTH CIRCUIT

LEONARD J. ZEPKE,

Plaintiff-Appellant,

V.

CRAWFORD & COMPANY,

Defendant-Appellee

---

On Appeal from the United States District  
Court for the Eastern District of Michigan.

BEFORE: ENGEL and KENNEDY, Circuit Judges; and  
EDWARDS, Senior Circuit Judge.

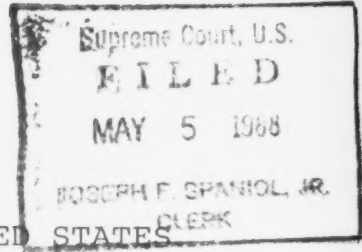
PER CURIAM: Plaintiff-Appellant Leonard J.

Zepke appeals from the District Court's granting of summary judgment to defendant Crawford and Company in his diversity tort action.

Upon consideration of the entire record and the briefs filed herein, we affirm the order of the District Court of April 9, 1986 accepting the report of the Magistrate, and the judgment of the District Court for the reasons stated by Judge Woods on August 7, 1986.

NO. 87-1687

IN THE SUPREME COURT OF THE UNITED STATES



Term

IN RE: LEONARD J. ZEPKE  
Petitioner in Prohibition or Mandamus

PETITION FOR PROHIBITION OR MANDAMUS  
From the United States Court of Appeals  
for the Sixth Circuit

BRIEF OF RESPONDENT, CRAWFORD &  
COMPANY, IN OPPOSITION TO PETITION  
FOR PROHIBITION OR MANDAMUS

FREDERICK G.ECCLESTONE P26313  
ECCLESTONE,MOFFETT & HUMPHREY, P.C.  
Attorney for Respondent  
Crawford & Company  
255 E. Brown Street -Suite 230  
Birmingham, Michigan 48011  
[313] 258-3200

LEONARD J. ZEPKE  
Petitioner - In Pro Per  
21819 Woodbridge Street  
St.Clair Shores, Michigan 48080



DISCLOSURE OF CORPORATE AFFILIATIONS  
AND FINANCIAL INTEREST

---

Respondent, Crawford & Company, refers this Honorable Court to the Disclosure of Corporate Affiliations and Financial Interest filed by Defendant-Appellee, Crawford & Company, in its Brief on Appeal to the United States Court of Appeals for the Sixth Circuit on or about April 28, 1987, wherein Crawford & Company made the following disclosures:

1. Is said party a subsidiary or affiliate of a publicly owned corporation?

Response: No.

2. Is there a publicly owned corporation not a party to the appeal, that has a financial interest in the outcome?

Response: No.



COUNTER-STATEMENT OF QUESTION  
PRESENTED FOR REVIEW

DID THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN,  
SOUTHERN DIVISION AND THE UNITED STATES  
COURT OF APPEALS FOR THE SIXTH CIRCUIT  
HAVE JURISDICTION OVER THE MATTER AT  
BAR BASED ON DIVERSITY OF CITIZENSHIP  
AND ALLEGED DAMAGES IN EXCESS OF TEN  
THOUSAND DOLLARS (\$10,000.00)?

U.S.District Court says: "Yes"

Court of Appeals says: "Yes"

Respondent says: "Yes"

Petitioner says: "No"



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CITATION TO OPINIONS  
AND JUDGMENTS BELOW

Leonard J. Zepke, Plaintiff-Appellant,  
v. Crawford & Company, a Georgia Corporation,  
Defendant-Appellee, in the United States Court  
of Appeals for the Sixth Circuit, NO. 86-1745  
before the Honorable Circuit Judges Engel,  
Kennedy and Edwards. Oral argument heard on  
November 3, 1987. The Court of Appeals, on  
November 16, 1987, issued an Order affirming  
both the Order of the Magistrate Paul Komives  
of December 20, 1985 denying Plaintiff's  
Motion to Remand to the Circuit Court for the  
County of Wayne, State of Michigan (an Order  
itself affirmed by the Honorable George E.  
Woods on April 9, 1986, subsequent to  
Plaintiff's appeal from the Magistrate's  
Recommendations and Orders) and, the Judgment  
of the Honorable George E. Woods dated August  
14, 1986. The matter was issued as a mandate  
by the Sixth Circuit Court of Appeals on  
December 2, 1987.



COUNTER-STATEMENT OF THE CASE

On or about September 18, 1985, Leonard J. Zepke, hereinafter referred to as "Petitioner", filed his Complaint against Crawford & Company, hereinafter referred to as "Respondent", in the State of Michigan, Circuit Court for the County of Wayne, naming as the sole Defendant, Crawford & Company. In his Complaint, the Petitioner admitted in Paragraph One that the Respondent is a foreign corporation.

Respondent, on October 7, 1985, filed its Petition for Removal, Bond for Removal, Affidavit of Filing in State Court, Notice of Filing Petition/Bond for Removal, Affidavit of Service and Proof of Service, in the United States District Court, Eastern District of Michigan, Southern Division, and the Circuit Court for the County of Wayne. The Petition for Removal was filed pursuant to 28 USC 1441 and averred that Federal Court diversity existed since the Respondent Corporation was



(a) a Georgia Corporation, (b) had its sole principal place of business in Atlanta, Georgia, and (c) the amount in controversy was asserted to be in excess of Ten Thousand Dollars (\$10,000.00).

Petitioner filed a Motion to Remand with the United States District Court on or about October 23, 1985, to which Respondent filed a timely response on November 5, 1985.

Filed with the United States District Court was an Affidavit of James H. Graham, Corporate Secretary for Respondent, which Affidavit affirmed that Respondent was a Georgia Corporation with its sole principal place of business in Atlanta, Georgia.

On or about December 20, 1985, the Honorable Magistrate Paul J. Komives issued his Opinion and Recommendation that Petitioner's Motion to Remand be denied.

On or about December 27, 1985, the Petitioner filed his Appeal from the Magis-



trate's Recommendations and Orders.

On April 9, 1986, Assigned Judge, the Honorable George E. Woods of the United States District Court, Eastern District of Michigan, Southern Division, entered an Order Denying Petitioner's Motion to Remand and accepted the Magistrate's Report and Recommendations with regard to same.

In formal hearings before the Honorable George E. Woods on August 8, 1986, Judge Woods heard oral arguments on Respondent's Motion for Summary Judgment which Motion was ultimately granted.

Petitioner then filed an appeal with the United States Court of Appeals for the Sixth Circuit. Oral arguments were heard on November 3, 1987, and on November 16, 1987, the Court of Appeals, Sixth Circuit, issued an Opinion affirming the Honorable George E. Woods' decision. The matter was issued as a Mandate by the Sixth Circuit Court of Appeals on December 2, 1987.



Petitioner then filed the current Petition for Prohibition or Mandamus with this Honorable Court.



## SUMMARY OF ARGUMENT

In his Petition, Petitioner seeks alternative remedies. With regard to Petitioner's prayer for a Writ of Prohibition, Respondent contends that this is an extraordinary Writ reserved for extraordinary situations, and is not warranted in that exceptional circumstances are not present in the matter at bar.

With regard to Petitioner's prayer for a Writ of Mandamus, Respondent contends that this is also an extraordinary Writ reserved for extraordinary situations, and is not warranted in that exceptional circumstances are not present in the matter at bar.

In the event that this Honorable Court additionally treats Petitioner's prayer as seeking relief through a Writ of Certiorari, Respondent contends that such a Writ is also not warranted in that special and important reasons, such as a division among the Federal Courts of Appeals, obvious jurisprudential



importance, or an important constitutional question are not present in the matter at bar.

In support of its position that the above relief is unwarranted in the matter at bar, Respondent contends that the entire procedure by which it removed the matter at bar from the State of Michigan, Circuit Court for the County of Wayne, to the United States District Court, Eastern District of Michigan, Southern Division, based on complete diversity of citizenship among the parties and alleged damages in excess of Ten Thousand Dollars (\$10,000.00) was properly executed. As noted above, this very issue has been examined by a United States District Court Magistrate, a United States District Court Judge, and a Panel of the United States Court of Appeals for the Sixth Circuit, all of whom were of the opinion that diversity had been established and Respondent had an absolute right to remove the case to and have it tried in the United States District Court,



Eastern District of Michigan, Southern Division.



## ARGUMENTS

In support of its contention that the relief sought by Petitioner is unwarranted in the matter at bar, Respondent states the following:

### I. WRIT OF PROHIBITION NOT WARRANTED

In his Petition, Petitioner seeks a Writ of Prohibition. Respondent contends that the lower court clearly had jurisdiction necessary for the disposition of this matter. Petitioner now argues, however, for no fewer than a fourth time, that the lower court was without jurisdiction based on a defective removal pleading. Even in cases where the jurisdiction of the lower court is doubtful, as opposed to being clearly absent, the Writ of Prohibition will ordinarily be denied. In Re: Chicago, Rock Island & Pacific Railway Co., 255 U.S. 273, 275-276, 41 S.Ct. 288, 289, 65 L.Ed. 631,633 (1921). See also, In Re: United State Parole



Commission, 793 F.2d 338, 343n.,36 (D.C.Cir. 1986).

Respondent, as mentioned above, contends that the lower court clearly had jurisdiction. In order for Petitioner to cast a doubt on the lower court's jurisdiction, he would have to prove that an alleged mistake by the Honorable Magistrate Komives regarding the propriety of Federal jurisdiction was triplicated by both the Honorable Judge George E. Woods and a Panel of the Court of Appeals for the Sixth Circuit. Respondent contends that Petitioner has fallen fatally short in his effort to cast doubt on the jurisdiction of the court below, and that a Writ of Prohibition is not warranted in the matter at bar.

## II. WRIT OF MANDAMUS NOT WARRANTED

In his Petition, Petitioner seeks the alternative remedy of a Writ of Mandamus. Jurisdiction has been given to the Circuit Court to determine whether a cause is one that



ought to be remanded. A Mandamus cannot be used to compel a Circuit Court to remand a cause after it once has refused a motion to that effect. Ex Parte Hoard, 105 U.S. 578, 579, 26 L.Ed. 1176, 1177, S.C. 15 Otto, 578-80 (1882). See also, Roche v. Evaporated Milk Association, 319 U.S. 21, 30, 63 S.Ct. 938, 944, 87 L.Ed. 1185, 1193 (1943).

Petitioner motioned in the Sixth Circuit Court of Appeals to vacate the judgment below and remand the matter on numerous and redundant occasions. As indicated above, the Panel of the United States Court of Appeals for the Sixth Circuit unanimously affirmed the decisions of both the Honorable Magistrate Komives and the Honorable Judge Woods. Therefore, the Petitioner's prayer for a Writ of Mandamus is unwarranted and should be denied.

### III. WRIT OF CERTIORARI NOT WARRANTED

In his prayer for relief, Petitioner seeks a Writ of Prohibition or, in the alternative,



a Writ of Mandamus. In the event this Honorable Court decides to treat the Petition as seeking additional relief through a Writ of Certiorari, Respondent contends that said Writ is only granted in cases involving principles, the settlement of which is of importance to the public as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the Circuit Courts of Appeal. Layne & Bowler Corp. vs. Western Well Works, Inc. 261 U.S. 387,393, 43 S.Ct. 422,423, 67 L.Ed. 712,714 (1923). See also, Sullivan vs. Little Hunting Park, Inc., 396 U.S. 229,250, 90 S.Ct. 400, 411, 24 L.Ed.2d 386,400 (1969).

As the Honorable Mr. Chief Justice Vinson said before the American Bar Association on September 7, 1949:

"[The Supreme Court] is not and never has been, primarily concerned with the correction of errors in lower court decisions". Gressman, Much Ado About Certiorari, 52 Geo. LJ 742,755 (1963-64).



In addition, Mr. Chief Justice Taft, made the following relevant comment at the hearings before the House Committee on the judiciary in 1922:

"No litigant is entitled to more than two chances....When a case goes beyond that, it is not primarily to preserve the right of the litigants." Gressman, Id.<sup>1</sup>

First, Respondent contends that there was no error in the lower court decisions. Second, Respondent contends that this is not the type of case which warrants a Writ of Certiorari in that none of the situations cited above which warrant such a Writ are present in the matter at bar. Therefore, a Writ of Certiorari is not warranted in the case at bar and should not be granted to the Petitioner.

---

<sup>1</sup>Mr. Eugene Gressman received his AB and JD from the University of Michigan. At the time he wrote this article he was a member of the Bars of the District of Columbia and the States of Maryland and Michigan. Mr. Gressman was co-author of Stern & Gressman, Supreme Court Practice (3rd Ed. 1962).



IV. REITERATION OF CONTENTIONS BELOW  
IN SUPPORT OF RESPONDENT'S PRAYER FOR  
DENIAL OF RELIEF SOUGHT BY PETITIONER

There is no question whatsoever that the Respondent was and is a Georgia Corporation and that its sole principal place of business was and is in Atlanta, Georgia, by virtue of the assertions of Defense Counsel as an Officer of the Court and by further assertions of James H. Graham via his Affidavit as Corporate Secretary for Respondent.

The Removal was proper pursuant to 28 USC 1441 and 28 USC 1446.

In addition, Respondent affirms that 28 USC 1332 provides in pertinent part as follows:

"The District Court shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$10,000.00 exclusive of interests and costs and is between (1) citizens of different states...." (emphasis added)

Petitioner's position in this matter has gone from the ridiculous to the sublime. His



requests have now been denied by a United States District Court Magistrate, a United States District Court Judge, and a Panel of the United States Court of Appeals for the Sixth Circuit.

Respondent wishes to bring to this most Honorable Court's attention the fact that, when drafting its Removal pleadings, it used Form II of the Appendix of Forms, Federal Civil Judicial Procedure and Rules, West Publishing Company 1985 Edition as a form. That form remained unchanged in the 1987 Edition.

Further, Federal Rule of Civil Procedure for the United States District Court No. 84, provides as follows:

"The forms contained in the Appendix of Forms are sufficient under the rules and are intended to indicate the simplicity and brevity of statement which the rules contemplate."  
Federal Civil Judicial Procedure and Rules, West Publishing Co., 1985 Ed.

Based on the above, Respondent contends that any relief sought by Petitioner is un-



warranted, and that this Most Honorable Court should deny the Petitioner any relief as such relief is unwarranted.



CONCLUSION

WHEREFORE, Respondent, CRAWFORD & COMPANY, prays that this most Honorable Court deny Mr. Leonard J. Zepke's Petition for Prohibition or Mandamus as well as award costs and attorney fees so wrongfully incurred.

ECCLESTONE, MOFFETT & HUMPHREY, P.C.

BY

FREDERICK G. ECCLESTONE P26313  
Attorney for Respondent, Crawford  
& Company  
255 E. Brown Street-Suite 230  
Birmingham, Michigan 48011  
[313] 258-3200



CERTIFICATE OF SERVICE

STATE OF MICHIGAN)  
  ) §  
COUNTY OF OAKLAND)

FREDERICK G.ECCLESTONE, being first duly sworn, deposes and says that on the 5th day of May, 1988, he served three (3) copies of Respondent Crawford & Company's Brief in Opposition to Petition for Prohibition or Mandamus on Petitioner, Leonard J. Zepke, by enclosing said copies in an envelope properly addressed to Leonard J. Zepke at his last known address of 21819 Woodbridge Street, St. Clair Shores, Michigan 48080, and said envelope was deposited in the United States Post Office mail receptacle in Birmingham, Michigan, with postage thereon duly prepaid.

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FREDERICK G.ECCLESTONE

Subscribed and sworn to before  
me this 5th day of May, 1988

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Notary Public, Oakland County, MI

My commission expires: 6/10/89



CERTIFICATE OF MAILING

STATE OF MICHIGAN)  
                                  ) §  
COUNTY OF OAKLAND)

FREDERICK G.ECCLESTONE, being first duly sworn, deposes and says that on the 5th day of May, 1988, he mailed to the Clerk of the Court of the United States Supreme Court, forty (40) copies of Respondent Crawford & Company's Brief in Opposition to Petition for Prohibition or Mandamus by enclosing said copies in a Federal Express overnight mail package properly addressed to the Clerk of the United States Supreme Court, Washington, D.C. 20543, and deposited said package in the Federal Express mail receptacle in Birmingham, Michigan.

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FREDERICK G.ECCLESTONE

Subscribed and sworn to before  
me this 5th day of May, 1988

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Notary Public, Oakland County, MI

My commission expires: 6-10-89